## REMARKS

Applicants respectfully request further examination and reconsideration in view of the instant response. Claims 1-42 remain pending in the case. Claims 1-7, 9-20, 22-34 and 36-42 are rejected. Claims 8, 21 and 35 are objected to.

## ALLOWABLE SUBJECT MATTER

Applicants wish to thank the Examiner for the indication that Claims 8, 21 and 35 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

## CLAIM 13 – NO GROUND OF REJECTION GIVEN

"The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made" (emphasis added; 37 CFR §1.104(b)). "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command" (37 CFR §1.104(c)(2)).

The Office Action Summary of the instant Office Action states that Claims 1-7, 9-20, 22-34 and 36-42 are pending and stand rejected. However, Applicants notes that no ground of rejection is given for pending Claim 13.

Therefore, Applicant respectfully submits that the instant Office Action is not "complete as to all matters" as required under CFR 37 §1.104(b).

Accordingly, Applicant respectfully submits that any subsequent Office Action, if necessary, should be non-Final as the rejection of Claim 13 has not yet been addressed.

<u>35 U.S.C. §112, first paragraph</u>

According to the instant Office Action, Claims 16-28 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. In particular, Applicants understand the instant Office Action to assert that independent Claims 16 and 28 are rejected as being "directed toward a single means" (Office Action mailed April 3, 2008; page 2, section 3).

Applicants note that 35 U.S.C. § 112, sixth paragraph, recites:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Furthermore, MPEP § 2181(I) recites, in part, that "[w]ith respect to the first prong of this analysis, a claim element that does not include the phrase 'means for' or 'step for' <u>will not be considered to invoke 35 U.S.C. 112, sixth paragraph</u>" (emphasis added; MPEP § 2181(I)).

Applicants note that Claim 16 is directed towards "[a] schedule adaptor" and that Claim 28 is directed towards "[a] channel characteristics estimator." In particular, Applicants respectfully submit that Claims 16 and 28 do not recite the phrase "means for" or "step for." Therefore, Applicants respectfully submit that Claims 16 and 28 do not invoke 35 U.S.C. § 112, sixth paragraph, and

thus are not means claims. Accordingly, Applicants respectfully submit that Claims 16 and 28 are not single means claims, as asserted, since Claims 16 and 28 are not means claims.

Therefore, Applicants respectfully submit that Claims 16-28 are in compliance with the enablement requirement of 35 U.S.C. § 112, first paragraph.

### 35 U.S.C. §102(e)

Claims 16, 18, 19, 22, 23, 29, 31-33, 36, 37 and 39 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,247,150 by Niemela. Applicants have reviewed Niemela and respectfully submit that the claimed embodiments as recited in Claims 16, 18, 19, 22, 23, 29, 31-33, 36, 37 and 39 are not anticipated by Niemela for at least the following rationale.

Applicants respectfully direct the Examiner to independent Claim 16 that recites that an embodiment of the present invention is directed to (emphasis added):

> A schedule adapter for receiving media packets in a first order and <u>transmitting said media packets in a second order</u> wherein said second order is selected to reduce distortion with respect to said first order based on estimated channel characteristics.

Independent Claim 29 recites a similar embodiment. Claims 18, 19, 22 and 23 that depend from independent Claim 16 and Claims 31-33, 36, 37 and 39 that depend from independent Claim 29 also include these embodiments.

MPEP §2131 provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Applicants respectfully submit that the rejection of the Claims is improper as the rejection of Claims 16, 18, 19, 22, 23, 29, 31-33, 36, 37 and 39 does not satisfy the requirements of a *prima facie* case of anticipation as claim embodiments are not met by Niemela. Applicants respectfully submit that Niemela does not teach or suggest the claimed embodiments in the manner set forth in independent Claims 16 and 29.

Applicants respectfully submit that Niemela does not disclose "transmitting said media packets in a second order" (emphasis added) as asserted in the instant Office Action.

Applicants understand Niemela to disclose the "transmission of data packets in a telecommunications network in which the transmitting end encodes the data blocks, divides them into smaller parts for interleaving, and transmits the parts in the form of bursts to the radio path, and in which the receiving end receives the bursts and deinterleaves them to reconstruct the original coded block" (col. 2, lines 8-14). In particular, Applicants understand Niemela to change the order of data blocks within a single packet (see at least col. 4, lines 11-21). In particular, Niemela recites that "[a]t the transmitting end, the data is divided into parts of the size of a packet and interleaving and coding of data is performed on

each packet. <u>The packets are then divided into transmission units one by one</u>, one packet into at least one transmission unit" (emphasis added; col. 4, lines 13-18).

Moreover, with reference to FIG. 5, Niemela "illustrates the transmission of a packet" (col. 5, line 46). In particular, Niemela recites (emphasis added):

> The packet is encoded by a coding method, resulting in a coded data block containing n bits. When desired, the order of the bits can thereafter be changed by pseudo-random scrambling of the block. Thereafter, <u>the bits in the coded packet are divided into blocks of equal size in accordance with the interleaving depth, and each block is further divided into two parts</u>. In the figure, a continuous vertical line has been used to separate the blocks, and the parts of the block are demarcated by a broken line.

In particular, Applicants respectfully submit that Niemela discloses changing the order of blocks <u>within a packet</u>. Moreover, Applicants respectfully submit that Niemela is silent as to changing the order of packets.

Therefore, Applicants respectfully submit that Niemela does not disclose "transmitting <u>said media packets</u> in a second order" (emphasis added) as claimed.

In summary, Applicants respectfully submit that the rejections of the Claims are improper as the rejection of Claims 16, 18, 19, 22, 23, 29, 31-33, 36, 37 and 39 does not satisfy the requirements of a *prima facie* case of <u>anticipation</u> as Niemela does not disclose "each and every element as set forth in the claim" as required. In particular, Applicants respectfully submit that Niemela does not disclose "transmitting <u>said media packets</u> in a second order" (emphasis added) as asserted in the instant Office Action.

Applicants respectfully assert that Niemela does not anticipate the claimed embodiments of the present invention as recited in independent Claims 16 and 29, that these claims overcome the rejection under 35 U.S.C. § 102(e), and that these claims are thus in a condition for allowance. Therefore, Applicants respectfully submit that Niemela also does not anticipate the claimed embodiments as recited in Claims 18, 19, 22 and 23 that depend from independent Claim 16 and Claims 31-33, 36, 37 and 39 that depend from independent Claim 29 also overcome the rejection under 35 U.S.C. § 102(e), and are in a condition for allowance as being dependent on an allowable base claim.

103(a) Rejections – Claims 1, 2, 4-6, 9, 10, 12, 27 and 40

According to the instant Office Action, Claims 1, 2, 4-6, 9, 10, 12, 27 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable Niemela in view of the prediction models described in the Applicants' disclosure at page 15, lines 10-19, hereinafter referred to as "conventional prediction models." The Applicants have reviewed Niemela and the conventional prediction models and respectfully submit that the embodiments recited in Claims 1, 2, 4-6, 9, 10, 12, 27 and 40 are patentable over Niemela and the conventional prediction models, alone or in combination, for at least the following rationale.

Claim 27 is dependent on independent Claim 16 and Claim 40 is dependent on independent Claim 29. Hence, by demonstrating that Niemela and the conventional prediction models do not show or suggest the limitations of Claims 16 and 29, it is also demonstrated that Niemela and the conventional prediction models do not show or suggest the limitations of Claims 27 and 40.

"As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries" including "[a]scertaining the differences between the claimed invention and the prior art" (MPEP 2141(II)). "In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious" (emphasis in original; MPEP 2141.02(I)). Applicants note that "[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art" (emphasis added; MPEP 2141(III)).

Applicants respectfully submit that the claimed invention as a whole is not obvious over Niemela in view of the conventional prediction models. First, Applicants respectfully submit that Niemela does not suggest "transmitting said media packets in a second order" (emphasis added) as recited in Applicants' Claim 1, 16, and the similar recitation of Claim 29.

As presented above, Applicants respectfully submit that Niemela does not disclose "transmitting said media packets in a second order" (emphasis added) as asserted in the instant Office Action. In contrast, Applicants respectfully submit that Niemela discloses changing the order of blocks within a packet. Moreover,

Applicants respectfully submit that Niemela is silent as to changing the order of packets. Therefore, Applicants respectfully submit that Niemela does not disclose "transmitting said media packets in a second order" (emphasis added) as claimed.

Moreover, Applicants submit that the conventional prediction models do not overcome the shortcomings of Niemela. In particular, Applicants respectfully submit that the conventional prediction models also does not disclose "transmitting said media packets in a second order" (emphasis added) as claimed.

In summary, Applicants respectfully submit that the rejections of the Claims are improper as the rejection of Claims 1, 2, 4-6, 9, 10, 12, 27 and 40 does not satisfy the requirements of a *prima facie* case of obviousness as Niemela in view of the conventional prediction models as a whole does not render the claimed embodiments obvious. In particular, Applicants respectfully submit that Niemela in view of the conventional prediction models does not teach, describe or suggest "transmitting said media packets in a second order" (emphasis added) as asserted in the instant Office Action.

Applicants respectfully assert that Niemela in view of the conventional prediction models does not render obvious the claimed embodiments of the present invention as recited in independent Claims 1, 16 and 29, that these claims overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Therefore, Applicants respectfully submit that Niemela in view of the conventional prediction models also does not render

obvious the claimed embodiments as recited in Claims 2, 4-6, 9, 10 and 12 that depend from independent Claim 1, Claim 27 that depends from independent Claim 16, and Claim 40 that depends from independent Claim 29 also overcome the rejection under 35 U.S.C. § 103(a), and are in a condition for allowance as being dependent on an allowable base claim.

<u>103(a) Rejections – Claims 3, 17 and 30</u>

According to the instant Office Action, Claims 3, 17 and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable Niemela in view of the conventional prediction models, further in view of U.S. Patent No. 7,164,860 by Narvaez et al., hereinafter referred to as "Narvaez." The Applicants have reviewed Niemela, the conventional prediction models and Narvaez and respectfully submit that the embodiments recited in Claims 3, 17 and 30 are patentable over Niemela, the conventional prediction models and Narvaez, alone or in combination, for at least the following rationale.

Claim 3 is dependent on independent Claim 1, Claim 17 is dependent on independent Claim 16 and Claim 30 is dependent on independent Claim 29. Hence, by demonstrating that Niemela, the conventional prediction models and Narvaez do not show or suggest the limitations of Claims 1, 16 and 29, it is also demonstrated that Niemela, the conventional prediction models and Narvaez models do not show or suggest the limitations of Claims 3, 17 and 30.

Applicants respectfully submit that the claimed invention <u>as a whole is not obvious</u> over Niemela, the conventional prediction models and Narvaez. First, Applicants respectfully submit that Niemela <u>does not suggest</u>

"transmitting said media packets in a second order" (emphasis added) as recited in Applicants' Claim 1, 16, and the similar recitation of Claim 29.

As presented above, Applicants respectfully submit that Niemela does not disclose "transmitting said media packets in a second order" (emphasis added) as asserted in the instant Office Action. In contrast, Applicants respectfully submit that Niemela discloses changing the order of blocks within a packet. Moreover, Applicants respectfully submit that Niemela is silent as to changing the order of packets. Therefore, Applicants respectfully submit that Niemela does not disclose "transmitting said media packets in a second order" (emphasis added) as claimed.

Moreover, Applicants submit that the conventional prediction models do not overcome the shortcomings of Niemela. In particular, Applicants respectfully submit that he conventional prediction models also does not disclose "transmitting said media packets in a second order" (emphasis added) as claimed.

Furthermore, Applicants submit that Narvaez does not overcome the shortcomings of Niemela and the conventional prediction models. Applicants understand Narvaez to disclose a multi-protocol optical transport network. In particular, Applicants respectfully submit that the Narvaez also does not disclose "transmitting said media packets in a second order" (emphasis added) as claimed.

In summary, Applicants respectfully submit that the rejections of the Claims are improper as the rejection of Claims 3, 17 and 30 does not satisfy the

requirements of a *prima facie* case of <u>obviousness</u> as Niemela, the conventional prediction models and Narvaez <u>as a whole</u> does not render the claimed embodiments obvious. In particular, Applicants respectfully submit that Niemela, the conventional prediction models and Narvaez does not teach, describe or suggest "transmitting <u>said media packets</u> in a second order" (emphasis added) as asserted in the instant Office Action.

Applicants respectfully assert that Niemela, the conventional prediction models and Narvaez does not render obvious the claimed embodiments of the present invention as recited in independent Claims 1, 16 and 29, that these claims overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Therefore, Applicants respectfully submit that Niemela, the conventional prediction models and Narvaez also does not render obvious the claimed embodiments as recited in Claim 3 that depends from independent Claim 1, Claim 17 that depends from independent Claim 16, and Claim 30 that depends from independent Claim 29 also overcome the rejection under 35 U.S.C. § 103(a), and are in a condition for allowance as being dependent on an allowable base claim.

### 103(a) Rejections – Claims 7, 14, 15, 20, 25, 26, 28, 34, 41 and 42

According to the instant Office Action, Claims 7, 14, 15, 20, 25, 26, 28, 34, 41 and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable Niemela in view of the conventional prediction models, further in view of U.S. Patent No. 6,959,048 by Horneman et al., hereinafter referred to as "Horneman." The Applicants have reviewed Niemela, the conventional prediction models and Horneman and respectfully submit that the embodiments

recited in Claims 7, 14, 15, 20, 25, 26, 28, 34, 41 and 42 are patentable over Niemela, the conventional prediction models and Horneman, alone or in combination, for at least the following rationale.

Claims 7, 14 and 15 are dependent on independent Claim 1, Claims 20, 25 and 26 are dependent on independent Claim 16 and Claims 34, 41 and 42 are dependent on independent Claim 29. Hence, by demonstrating that Niemela, the conventional prediction models and Horneman do not show or suggest the limitations of Claims 1, 16 and 29, it is also demonstrated that Niemela, the conventional prediction models and Horneman models do not show or suggest the limitations of Claims 7, 14, 15, 20, 25, 26, 28, 34, 41 and 42.

Applicants respectfully submit that the claimed invention as a whole is not obvious over Niemela, the conventional prediction models and Horneman. First, Applicants respectfully submit that Niemela does not suggest "transmitting said media packets in a second order" (emphasis added) as recited in Applicants' Claim 1, 16, and the similar recitation of Claim 29.

As presented above, Applicants respectfully submit that Niemela does not disclose "transmitting said media packets in a second order" (emphasis added) as asserted in the instant Office Action. In contrast, Applicants respectfully submit that Niemela discloses changing the order of blocks within a packet. Moreover, Applicants respectfully submit that Niemela is silent as to changing the order of packets. Therefore, Applicants respectfully submit that Niemela does not disclose

"transmitting <u>said media packets</u> in a second order" (emphasis added) as claimed.

Moreover, Applicants submit that the conventional prediction models do not overcome the shortcomings of Niemela. In particular, Applicants respectfully submit that he conventional prediction models also does not disclose "transmitting <u>said media packets</u> in a second order" (emphasis added) as claimed.

Furthermore, Applicants submit that Horneman does not overcome the shortcomings of Niemela and the conventional prediction models. Applicants understand Horneman to disclose optimizing link quality by space and time interleaving. In particular, Applicants respectfully submit that Horneman also does not disclose "transmitting <u>said media packets</u> in a second order" (emphasis added) as claimed.

In summary, Applicants respectfully submit that the rejections of the Claims are improper as the rejection of Claims 7, 14, 15, 20, 25, 26, 34, 41 and 42 does not satisfy the requirements of a *prima facie* case of <u>obviousness</u> as Niemela, the conventional prediction models and Horneman<u> as a whole</u> does not render the claimed embodiments obvious. In particular, Applicants respectfully submit that Niemela, the conventional prediction models and Horneman does not teach, describe or suggest "transmitting <u>said media packets</u> in a second order" (emphasis added) as asserted in the instant Office Action.

With regard to independent Claim 28, the instant Office Action asserts that Horneman is relied on as teaching "selecting said schedule ... from a plurality of

adaptors" (Office Action mailed April 3, 2008; page 4, section 7). Applicants respectfully submit that independent Claim 28 does not include such a recitation. Therefore, Applicants respectfully submit that Claim 28 also overcomes the rejection under 35 U.S.C. § 103(a).

Applicants respectfully assert that Niemela, the conventional prediction models and Horneman does not render obvious the claimed embodiments of the present invention as recited in independent Claims 1, 16, 28 and 29, that these claims overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Therefore, Applicants respectfully submit that Niemela, the conventional prediction models and Horneman also does not render obvious the claimed embodiments as recited in Claims 7, 14 and 15 that are dependent on independent Claim 1, Claims 20, 25 and 26 that are dependent on independent Claim 16 and Claims 34, 41 and 42 that are dependent on independent Claim 29 also overcome the rejection under 35 U.S.C. § 103(a), and are in a condition for allowance as being dependent on an allowable base claim.

### 103(a) Rejections – Claims 11, 24 and 38

According to the instant Office Action, Claims 11, 24 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable Niemela in view of the conventional prediction models, further in view of U.S. Patent No. 6,289,054 by Rhee. The Applicants have reviewed Niemela, the conventional prediction models and Rhee and respectfully submit that the embodiments recited in Claims 11, 24 and 38  are patentable over Niemela, the conventional prediction models and Rhee, alone or in combination, for at least the following rationale.

Claim 11 is dependent on independent Claim 1, Claim 24 is dependent on independent Claim 16 and Claim 38 is dependent on independent Claim 29. Hence, by demonstrating that Niemela, the conventional prediction models and Rhee do not show or suggest the limitations of Claims 1, 16 and 29, it is also demonstrated that Niemela, the conventional prediction models and Rhee models do not show or suggest the limitations of Claims 11, 24 and 38.

Applicants respectfully submit that the claimed invention <u>as a whole is not obvious</u> over Niemela, the conventional prediction models and Rhee. First, Applicants respectfully submit that Niemela <u>does not suggest</u> "transmitting <u>said media packets</u> in a second order" (emphasis added) as recited in Applicants' Claim 1, 16, and the similar recitation of Claim 29.

As presented above, Applicants respectfully submit that Niemela does not disclose "transmitting <u>said media packets</u> in a second order" (emphasis added) as asserted in the instant Office Action. In contrast, Applicants respectfully submit that Niemela discloses changing the order of blocks <u>within a packet</u>. Moreover, Applicants respectfully submit that Niemela is silent as to changing the order of packets. Therefore, Applicants respectfully submit that Niemela does not disclose "transmitting <u>said media packets</u> in a second order" (emphasis added) as claimed.

Moreover, Applicants submit that the conventional prediction models do not overcome the shortcomings of Niemela. In particular, Applicants respectfully submit that he conventional prediction models also does not disclose "transmitting <u>said media packets</u> in a second order" (emphasis added) as claimed.

Furthermore, Applicants submit that Rhee does not overcome the shortcomings of Niemela and the conventional prediction models. Applicants understand Rhee to disclose a methods and systems for packet loss recovery. In particular, Applicants respectfully submit that the Rhee also does not disclose "transmitting <u>said media packets</u> in a second order" (emphasis added) as claimed.

In summary, Applicants respectfully submit that the rejections of the Claims are improper as the rejection of Claims 11, 24 and 38 does not satisfy the requirements of a *prima facie* case of <u>obviousness</u> as Niemela, the conventional prediction models and Rhee <u>as a whole</u> does not render the claimed embodiments obvious. In particular, Applicants respectfully submit that Niemela, the conventional prediction models and Rhee does not teach, describe or suggest "transmitting <u>said media packets</u> in a second order" (emphasis added) as asserted in the instant Office Action.

Applicants respectfully assert that Niemela, the conventional prediction models and Rhee does not render obvious the claimed embodiments of the present invention as recited in independent Claims 1, 16 and 29, that these claims overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Therefore, Applicants respectfully submit that Niemela, the conventional prediction models and Rhee also does not render obvious the claimed embodiments as recited in Claim 11 that depends from independent Claim 1, Claim 24 that depends from independent Claim 16, and Claim 38 that depends from independent Claim 29 also overcome the rejection

under 35 U.S.C. § 103(a), and are in a condition for allowance as being

dependent on an allowable base claim.

## CONCLUSION

In light of the above remarks, Applicants respectfully request reconsideration of the rejected claims. Based on the arguments presented above, Applicants respectfully assert that Claims 1-7, 9-20, 22-34 and 36-42 overcome the rejections of record, and therefore Applicants respectfully solicit allowance of these claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

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/John P. Wagner, Jr./
John P. Wagner, Jr.
Reg. No. 35,398

Westridge Business Park
123 Westridge Drive
Watsonville, CA 95076

(408) 377-0500
Facsimile: (831) 763-2895